STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	:	
	:	01-0376
Amendment of 83 Ill. Adm. Code 451, "Certification of Alternative Retail Electric Suppliers"	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its attorneys, and files its Reply Brief on Exceptions to the October 15, 2001, Proposed Order ("Proposed Order") in the above-captioned proceeding. Briefs on Exceptions ("BOE") were filed on October 22, 2001, by Staff and AES NewEnergy, Inc. ("AES NewEnergy"). Staff now replies to the issue argued in AES NewEnergy's BOE.

I. THE COMMISSION SHOULD NOT REVISE THE PROPOSED ORDER TO IMPLEMENT AES NEWENERGY'S PROPOSAL FOR CALCULATION OF THE APPROPRIATE LEVEL OF SURETY

It is Staff's position that the level of surety for customers in the event of a default by an Alternative Retail Electric Supplier ("ARES") must be sufficient to compensate those customers for the additional power and energy costs incurred as a result of the default. The additional costs arise from the charges customers will experience by being placed on the utility's Interim Supply Service tariff ("ISS"). (ICC Staff Exhibit 3.0 at 2.)

There is no dispute that the existing formula in Sections 451.110(a)(4), 451.220(a)(4), and 451.320(a)(4) of the ARES certification rule would adequately compensate customers for the ISS charges. The formula is based, first, on the premise that an ISS customer is likely to remain on ISS approximately 45 days, or 1,080 hours

(45 days X 24 hours per day). This is appropriate, since each electric utility allows ISS customers to remain on that service for at least two billing cycles, or approximately 60 days. Since it is more likely that a supplier will default on its obligations during the summer period than in lower-cost periods, the electricity prices that customers will face are peak period prices. Thus, the second element of the formula, the pricing element, is based on an average of the previous year's 45 highest prices, where the prices are derived from a price index chosen by the Illinois Commerce Commission ("Commission"). The third and final element of the formula is the amount of load the ARES expects to serve in the upcoming year, as chosen by the ARES. (Id. at 2-3.)

AES NewEnergy does not agree that the formula in the ARES certification rule calculates the appropriate surety level. AES NewEnergy even appears to disagree that the correct way to derive the appropriate formula is to determine the amount of money that should be available to customers who are suddenly placed on ISS, since it states that customers have other options available to them, including the utility's bundled service, service from another ARES, or the utility's Power Purchase Option. (AES NewEnergy BOE at 6.) While it is true that some or all of these options may eventually be available to a customer that suffers the default of its supplier, the most obvious and straightforward way to calculate a customer's exposure to ISS charges is to determine the level of charges it would pay on ISS.

Nevertheless, AES NewEnergy's proposal purports to be sufficient to fully compensate customers, even if it approaches the level of surety issue from another direction. Unfortunately, in Staff's opinion, AES NewEnergy's approach is so indirect that it is difficult to evaluate whether it addresses the issue at all.

Of the surety formula's three elements, only the third, the "load" element, is common to both approaches. The other two elements, the "time" element and the "pricing" element, are significantly different in the existing formula versus the formula advocated by AES NewEnergy.

The first point of departure between the two approaches is the number of hours during which a customer would pay market-based prices. AES NewEnergy uses a yearly period, rather than the estimated 45 days that a customer might be expected to remain on ISS. As support for this part of its proposal, AES NewEnergy states that a yearly period is consistent with the time periods reflected in ARES' contracts. (Id.) While some ARES probably sign contracts with a one-year duration, that fact is irrelevant when determining the appropriate amount of surety that is necessary to fully compensate customers placed on ISS.

The second significant difference between the two formulas is that the electricity price used in the AES NewEnergy proposal is not based on the full value of a peak period price. Instead, the proposal recommends the use of the product of the multiplication of 0.1 times the "Market Value Energy Charge." (Direct Testimony of Philip R. O'Connor, Ph.D. at 9.) Obviously, this result bears no relation to the amount a customer would pay on ISS. Also, the use of this pricing element introduces a new problem. An ARES could only use the formula in the service territories of those electric utilities that charge transition charges. Currently, only three utilities charge transition charges. (ICC Staff Exhibit 3.0 at 4.) The result of the calculations using AES NewEnergy's formula, as Staff witness Eric P. Schlaf demonstrated, would tend to understate the amount of surety that an ARES would need to have available for its customers should it default. (Id. at 5.)

A difference in approach does not necessarily mean that a proposal should immediately be rejected. Likewise, the fact that a new approach would likely bring a different result does not necessarily mean that the new approach should be rejected either. However, since the existing formula satisfactorily fulfills the objective of providing a sufficient pool of money available to customers who happen to choose a supplier that defaults, the new approach should be superior to the existing formula. In Staff's opinion, the surety calculation method proposed by AES NewEnergy is not superior to the existing formula. In fact, it cannot even be applied in six out of the state's nine service areas, which obviously limits its usefulness. Staff believes the AES NewEnergy formula would tend to produce a result that would not adequately compensate customers who are placed on ISS as a result of a defaulting supplier.

Therefore, Staff urges the Commission to reject the proposal offered by AES NewEnergy in its Brief on Exceptions.

II. CONCLUSION

For the foregoing reasons, Staff respectfully requests that the Commission approve the October 15, 2001, Proposed Order with Staff's suggested modifications contained in its October 22, 2001, Brief on Exceptions.

Respectfully submitted,

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